

REMARKS

United States Serial No. 10/551.982 was filed on June 23, 2006. A first Office Action was mailed on August 22, 2008. Applicants have amended claims 1, 3-5, 10-13, and 20, and have canceled claims 2, 14, and 19. Accordingly, claims 1, 3-13, 15-18, and 20 remain pending. Applicants respectfully request reconsideration and withdrawal of the rejections under 35 U.S.C. §102(b) and §103(a) and issuance of a notice of allowance for claims 1, 3-13, 15-18, and 20 in view of the amendments and the remarks provided herein.

The Office Action indicated that the oath or declaration was defective because non-initialed and/or non-dated alterations to the oath had been made. Applicants have provided a newly signed declaration and power of attorney.

The Office Action also objected to the title as being non descriptive. Applicants have replaced the old title with a new title, and submit that the new title is clearly indicative of the invention to which the claims are directed, as requested.

Claim rejections under 35 U.S.C. §102

The Office Action has rejected claims 1, 6-7, 8-10 and 18 under 35 U.S.C. §102(b) as being anticipated by Melbye (EP0641746). Applicants respectfully traverse the rejection. Nonetheless, Applicants have amended claim 1 to incorporate the elements of claim 2, which the Office Action has indicated were not anticipated by Melbye. The remaining claims rejected under 35 U.S.C. §102 all depend from claim 1, and will therefore include these new limitations as well. Accordingly, Applicants respectfully request that the rejection of claims 1, 6-7, 8-10, and 18 under 35 U.S.C. §102 for being anticipated by Melbye be withdrawn.

Claim rejections under 35 U.S.C. §103

The Office Action also rejected claims 2-5, 11-13, and 19-20 under 35 U.S.C. §103(a) as being unpatentable over Melbye in view of Bell (EP 0200471) and Applicants' disclosure on page 4, lines 10-15 of the present specification. Applicants respectfully traverse the rejection.

The burden is on the Patent Office to provide an explicit rationale for establishing a *prima facie* case of obviousness. Subsequent to *KSR International Co. v. Teleflex Inc.*, a number of rationales exist for establishing a *prima facie* case of obviousness. In the present case, the Office Action alleges that one of ordinary skill in the art would have incorporated polysiloxane antifoaming agents into the composition of Melbye based on the advantage as taught by Bell *et al.*, namely, that antifoaming agents could be used to prevent introduction of excess air into concrete mixtures, and further that Applicants admitted that siloxanes are known to have antifoaming properties, and therefore Applicants were using a known element for its intended use in a known environment to achieve an expected result (i.e., rationale D in MPEP §2143). Applicants respectfully traverse.

While it is known that antifoaming is a property exhibited by siloxanes, Applicants did not assert that the siloxanes of the present claims were being used for their antifoaming property. Rather, in the text being referred to by the Office Action (p. 4, lines 11-13), Applicants merely stated that siloxane's antifoaming property was known. In the paragraph on page 6, lines 10-21 of the specification, Applicants described the beneficial results obtained through use of the claimed composition. The benefits include decreasing shrinkage and cracking and improving freeze-thaw resistance and permeability. However, it is known that antifoaming agents decrease air entrapment within cement, and that decreasing air entrapment will decrease the freeze-thaw resistance by reducing the volume available for ice expansion within the cement. Accordingly, increasing the freeze-thaw resistance would not be an expected result from inclusion of an antifoaming agent into the claimed composition. Rather, the opposite

effect would be expected. The alleged rationale thus does not support a *prima facie* case of obviousness for claims 2-5, 11-13, and 19-20.

An applicant can also rebut a *prima facie* case of obviousness by presenting comparative test data showing that the claimed invention possesses unexpectedly improved properties or properties that the prior art does not have. Applicants have provided such data in the present application in an example provided from page 6. line 31 to page 8. line 8. This example demonstrates that admixture 2, which includes a siloxane, exhibits appreciably improved shrinkage character, as well as providing better flow characteristics and decreased permeability to water, when compared to compositions lacking the siloxane. Accordingly, the claims are also unobvious as a result of providing unexpected results compared to the prior art. Thus, for the reasons provided above. Applicants respectfully request that the rejection of claims 2-5, 11-13, and 19-20 under 35 U.S.C. §103(a) over Melbye in view of Bell (EP 0200471) be withdrawn.

Further, with regard to claims 10, 15, 16, 18, and 20, which are directed to cementitious compositions, Applicants have amended claim 10, from which the remaining claims depend, to include the further limitation that the amount of siloxane compound is from 0.05% to 20% by weight of the cement, previously found in dependent claim 14. The Office Action indicated that Applicants claimed range of 0.05% to 20% was taught by Melbye's teaching of the use of a plasticizer or superplasticizer in the proportion of from about 0.01% to 10%. Applicants respectfully traverse.

According to the formula used in column 3 of Melbye, the polysiloxane can be a part of the side chains of a plasticizer or superplasticizer, and that this plasticizer or superplasticizer may be used in the proportions recited by the Office Action. The proportions given in Melbye clearly refer to the plasticizer or the superplasticizer, not the poly(siloxane). Melbye is therefore silent as to the amount of siloxane actually in the compositions, and therefore does not teach the claimed range of 0.05% to 20% of

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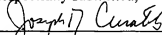
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claims 10, 15, 16, 18, and 20. Furthermore, Bell does not teach any proportions of siloxanes with weight percent based on the amount of cement composition. In addition, in the Examples of the present application, Applicants have shown that use of siloxanes in the claimed range provide unexpectedly improved shrinkage results. Accordingly, because neither Melbye or Bell teach the claimed range of poly(siloxanes) in a cementitious composition, and Applicants have provided evidence of unexpected results obtained with the claimed cementitious composition, claims 10, 15, 16, 18, and 20 are not suggested by the combination of Melbye in view of Bell. It is therefor respectfully requested that the 35 U.S.C. §103 rejection of claims 10, 15, 16, 18 and 20 be withdrawn.

In view of the above amendments and remarks, Applicants respectfully request withdrawal of the objection to the title (specification) and the 35 U.S.C. §§ 102(b) and 103(a) rejections of claims 1-20, and earnestly solicit the issuance of a formal Notice of Allowance for claims 1, 3-13, 15-18, and 20. Should there be any questions about the above amendments or remarks, the undersigned attorney would welcome a telephone call.

Respectfully submitted,



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